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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic report due in 1993

Addendum

CHILE*

[16 February 1994]

Introduction

1. The initial report of the Government of Chile to the Committee against Torture was submitted by the military regime in 1989 (CAT/C/7/Add.2). The Committee found that the report suffered from serious deficiencies, and therefore requested the Chilean authorities to submit an additional report the following year (Report of the Committee against Torture, Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44)). It fell to the present Government to submit the additional report (CAT/C/7/Add.9).

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* The initial report submitted by Chile is contained in document CAT/C/7/Add.2; for its consideration by the Committee, see documents CAT/C/SR.40 and 41 and Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44), paras. 341-375. For the additional report of Chile, see document CAT/C/7/Add.9. For its consideration by the Committee, see documents CAT/C/SR.77 and 78 and Official Records of the General Assembly, Forty-sixth session, Supplement No. 46 (A/46/46), paras. 237-262.

2. Subsequent to that supplementary document, at the Government's prompting, a number of enormously important laws were enacted introducing legal reforms in respect of the detention of individuals that are very effective in preventing and punishing the practice of torture, which explains the submission of an addendum to the aforementioned additional report. At the Committee's sixth session, in April 1991, the representative of the present Government made an oral statement concerning the additional report and its addendum (CAT/C/SR.77 and 78).

3. The general guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14) indicate that such reports should be presented in two parts, the second containing any information requested by the Committee during its consideration of the preceding report by the State party. Chile complied with this obligation through the submission of the additional report and the addendum thereto, and the oral statement made by the representative of the Chilean Government to the Committee, as referred to in the previous paragraph.

4. In view of the foregoing, the present additional report supplies the information requested as part I under the guidelines, in other words information on new measures and new developments relating to the implementation of the Convention in our country from 1991 on.

I. LEGAL AND POLITICAL FRAMEWORK

5. After being democratically elected in December 1989, the Government of President Aylwin took office in Chile on 11 March 1990 and the Parliament was formally installed, initiating a process of restoration of the democratic institutional system interrupted by the military regime. Since that date, Chile has functioned normally under the rule of law, with State bodies, the armed forces, the police, political parties and trade union and social organizations performing their appointed functions under the law and the Constitution. It should be emphasized that no "states of constitutional exception" have been declared by the Government and that, consequently, the rights and freedoms guaranteed to all persons by the Constitution have not been restricted in any way.

6. Habeas corpus is once again applicable in the normal manner. The termination of permanent "states of constitutional exception", the institutional framework which made torture possible under the previous regime, has contributed to a change of attitude on the part of the courts regarding their duty to watch over the lawfulness of detention through the due processing of habeas corpus applications. This is demonstrated, for instance, by decisions of the Military Appeal Court accepting such applications, remedying arbitrary acts committed in the course of detention 1/ and instructing police officers and the military tribunals to rectify procedural errors occurring during such detention. 2/

7. The political and legal normality described above has substantially changed the situation regarding fundamental rights and freedoms in the country as compared with the 1973-1990 period. The democratic Government has put an end to what the National Commission for the Truth and Reconciliation, after carrying out an investigation, described as a situation of systematic

violation of human rights by the military regime. 3/ During that period, the report of the National Commission expressly states, "... torture was a daily occurrence ... Ill-treatment and torture were inflicted systematically at secret places of detention belonging to DINA and other intelligence services ..." and there was "... an undeniable reality of torture, as evidenced by the vast number and virtual uniformity of such acts ...". 4/

II. APPLICATION OF THE CONVENTION IN THE INTERNAL LEGAL ORDER

8. The Convention was officially incorporated in Chile's internal legal order during the previous military regime, but with reservations running counter to its object and purpose. Accordingly, those reservations were immediately withdrawn when the constitutional Government took office. At the present time, the Convention is fully in force in Chile.

9. In the event of a conflict between internal law and the provisions of the Convention, it is the Convention that prevails. This is by virtue of the constitutional reform approved on 30 July 1989, which modified the hierarchy of human rights treaty norms, elevating them to constitutional status, by laying down in article 5 of the Constitution that "It is the duty of the State organs to respect and promote such rights, as guaranteed by this Constitution and by international treaties ratified by Chile which are in force".

10. Given the legal force possessed by the norms of the Convention since their incorporation into the internal legal order, clauses such as article 5 (2) are "self-executing", and persons allegedly responsible for acts of torture committed abroad could be tried in Chile without any need for an express provision of national legislation on the matter.

III. DEFINITION AND PUNISHMENT OF TORTURE UNDER THE INTERNAL LEGAL ORDER

11. As indicated in Chile's previous reports to the Committee, the prohibition of any ill-treatment is embodied in article 19 (1) (4) of the Political Constitution of the State. Torture is defined in article 150 of the Penal Code, which, under the section entitled "Crimes and ordinary offences affecting the rights guaranteed by the Constitution", refers to public officials who "apply torture or practise unnecessary severity" subjecting them to penalties varying from 61 days to 5 years.

12. In addition, article 330 of the Code of Military Justice imposes penalties ranging from 41 days (if no injuries or only light injuries are inflicted) to 15 years (if the injured party dies as a result) on members of the armed forces who use or arrange for the use of unnecessary violence.

13. Section IV, article 19, of the Chilean Police Department Organization Act (Decree-Law No. 2460) "prohibits officials of the Chilean Police Department from committing any act of violence designed to obtain statements from a prisoner". The penalties imposed on persons breaking this rule are of the same range as those laid down in the above-mentioned article of the Code of Military Justice.

IV. MEASURES AFFECTING THE IMPLEMENTATION OF THE CONVENTION FROM 1991 ON

A. Legal measures

14. In the human rights field, the present Government has taken a number of initiatives designed to solve outstanding problems inherited from the military regime, together with measures to ensure full applicability and observance of fundamental human rights and to prevent their violation through the introduction of legal reforms.

1. Withdrawal of reservations (Convention, arts. 2 (3), 3 and 20)

15. With the unequivocal aim of putting an end to torture, the instrument withdrawing Chile's reservations to the Convention was deposited with the Secretary-General of the United Nations in September 1991. In August 1990, a similar instrument, withdrawing Chile's reservations to the Inter-American Convention to Prevent and Punish Torture, had been deposited with the Secretary-General of the Organization of American States. The reservations had been formulated by the military Government on ratifying the Convention, and they perverted its application. The present Government withdrew: (a) the reservation to article 2 (3) of the Convention, which rendered the principle of considered obedience inapplicable by exonerating from criminal responsibility a subordinate who queried a torture order with a superior who confirmed it; and (b) the reservation rendering article 3 of the Convention inapplicable.

16. At the same time, Chile deposited with the Secretary-General the instrument recognizing the competence of the Committee against Torture under article 21 of the Convention.

17. The only reservations still in force are those relating to article 30 of the Convention and the reservation whereby the application of the Inter-American Convention prevails over that of the United Nations Convention, in the event of incompatibility between the two, in Chile's relations with countries of the Americas.

2. Legal reforms of a procedural nature (Convention, art. 2 (1)); Act No. 19,047 of 14 February 1991 amending articles 272 bis, 293, 299, 303 and 323 of the Code of Penal Procedure

18. The reforms with implications for the prevention of torture were explained in detail to the Committee through the addendum to the additional report and the oral statement by the representative of the Chilean Government. Prominent among them are the procedural reforms designed to protect the physical and mental integrity of individuals through: a medical examination of the prisoner during exceptional periods of detention (art. 272 bis); the impossibility of extending incommunicado detention beyond the established time-limits (art. 299); restrictions on the severity of incommunicado detention, permission being given for a lawyer to be present when the prisoner is placed at the disposal of the police or the judge (arts. 293 and 303); and the requirement that the judge should take steps to ascertain that the prisoner has not been tortured or threatened with torture when making his confession (art. 323).

19. Transitional provisions of Act No. 19,047 stipulated that many cases were to be transferred from the military to the civil courts. Given the likelihood of these proceedings against civilians being based on extrajudicial confessions obtained under duress, the prisoner was given the right to retract the statement he had made before the military tribunal, with the civil judge taking this new deposition as though it were the first confession regarding the prisoner's participation in the acts covered by the judicial investigation (Convention, art. 15).

3. Promulgation of the Prison Regulations (Convention, arts. 2 and 10 (2))

Ministry of Justice Decree No. 1771 of 30 December 1992

20. This Decree brought together in a single legal text a variety of provisions for improving the prison system which had been enacted piecemeal. The Decree establishes the principles and rules governing the administration of prisons by officials of the Chilean Gendarmería, prison operating procedures, prisoners' rights and obligations and social rehabilitation treatment for persons serving sentences.

21. The preamble to this text expressly provides that "it is the policy of this Government to effectively rehabilitate convicted persons, respecting their fundamental rights, as a means of preventing the commission of further offences" and that "it is the aim of the present Government to implement a policy consistent with modern approaches to imprisonment and international treaties to which Chile has acceded".

22. Article 5 states that: "The norms laid down in the present Regulations must be applied impartially, and there can be no differences of treatment based on birth, race, political opinion, religious belief, social status or any other circumstances. The prison administration will endeavour to ensure the effective enjoyment of the maximum number of human rights compatible with the status of prisoner."

23. Article 6 of the Regulations provides that "no prisoner shall be subjected to torture or cruel, inhuman or degrading treatment, whether verbal or physical, nor to unnecessary severity in the application of the present Regulations". Articles 69 and 70 indicate that breaches of discipline by Gendarmería officials which might constitute offences, and the application "of punishments other than those stipulated, or administered by officials other than those empowered by these Regulations", shall give rise to administrative penalties, without prejudice to any criminal liability deriving from such acts.

24. Article 41 of these Regulations complements the recent reform of Act No. 19,047, which established the right of a prisoner subject to the incommunicado detention regime to confer with his lawyer in the presence of a judge. The article concerned provides: "Communication with the defence lawyer can in no case be suspended. In the event of judicially imposed incommunicado detention, such communication shall take place in accordance with the provisions of article 303 of the Code of Penal Procedure."

4. The offence of torture in extradition treaties (Convention, art. 8 (1))

25. Chile includes a general provision in extradition treaties signed with other States indicating that "offences included in multilateral conventions to which both countries are party" 5/ shall be extraditable. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is one such convention.

B. Institutional changes

In the Police Department

26. The present Government proposes to reverse the practice of tolerating excesses committed by members of the civil police against prisoners, as well as to promote and guarantee respect for human rights through educational measures and effective disciplinary control over its officials.

(a) Educational measures (Convention, arts. 10 (1) and 11))

27. Such measures are designed to retrain serving police officers and give a new perspective to persons studying for a career in the police force by reformulating the curricula in the relevant Academy.

28. At the Police Department Academy, which gives instruction to persons entering that Department, all subjects taught have been reordered with a view to instilling respect for human rights and a professional, scientific approach to conducting police investigations based on the collection of the maximum amount of evidence before the suspected offender is interrogated. New blood has been introduced to the Academy's teaching staff and there has been a change in the teaching methods, which had been militarized during the previous regime (for example, uniforms were worn on certain occasions).

29. The retraining of serving officials is achieved through specialized postgraduate courses given at the Higher Police Department Institute, which are a must for anyone who wishes to advance in a police career. New teachers have been brought into this Institute and its curricula have been reformulated with a view to heightening awareness among the ranks of the need to project a good image of the police, based on a professional attitude among its members and the rejection of corrupt practices and practices injurious to prisoners' integrity. The teaching of international human rights treaties has been included, a chair of police ethics has been established, and the police sociology course has been supplemented by elements of human rights.

30. In addition, a broad-ranging postgraduate programme is being conducted abroad with government bodies of other countries, especially those whose police force belongs to Interpol, and with international organizations such as the United Nations and the Organization of American States.

31. As part of the programme of the Inter-American Institute of Human Rights, a professional and police workshop on human rights prepared by members of the Chilean Police Department was held at the Police Training Academy of Panama City in August and September 1993.

32. The Chilean delegation, composed of the Chief of the National Homicide Service, the Chief of the Assault Squad, the Chief of Internal Affairs and the Adviser on Psychology and Sociology to the Director-General of the Police Department, participated in this workshop together with police delegations from the Central American countries and Mexico.

33. The workshop, which discussed theoretical and practical aspects of police work on the basis of an analysis of specific cases, was divided into four groups, addressing issues such as: the principle of penal proportionality and human rights; the role of the leadership in shaping police attitudes; the right to justice, the principle of innocence and the right to a defence in police training; the relationship between human rights and personal and collective security in police work; and the revaluation of police work in the context of social development and the creation of conditions for the exercise of human rights.

(b) Monitoring and supervision measures (Convention, arts. 12 and 13)

34. When the present Government took office, the Police Department Directorate set up a Committee for Coordination and Analysis coming under the Internal Affairs Service which plans, coordinates and oversees information and analysis concerning human rights violations under the military regime. This Committee also maintains smooth and permanent relations with Chilean non-governmental organizations (NGOs) dealing with human rights, serving as a conduit for the receipt of complaints regarding current violations of human rights alleged to have been committed by Police Department officials. Such complaints are lodged by NGOs or individuals and, on various occasions, have led to internal investigations into allegations of ill-treatment of prisoners.

(c) Disciplinary measures (Convention, arts. 12 and 13)

35. Since the institution of the democratic Government, the Police Department has undergone major restructuring. Some 500 officials - about 20 per cent of the Department's staff - have taken retirement for various reasons, sometimes as a result of administrative investigations.

36. In 1992, for example, the Police Department took three of its officials to court for physically ill-treating the prisoner Marcos Villanueva Vinet. The proceedings are being conducted by the Third Criminal Court of Santiago as case No. 16.2919-2. Three detectives who have been released on bail are standing trial. As a result of these proceedings, the Assault Investigation Prefecture (PRIA) was disbanded and its Chief and Sub-Prefect left the institution. In addition, an internal police inquiry into this maltreatment is pending.

C. Proceedings relating to acts of torture

37. Between March 1990 and October 1993, some 50 complaints were lodged with the country's civil and military courts for alleged ill-treatment of prisoners at the hands of the civil and uniformed police. These investigations are being pursued in the normal way by the competent Chilean courts in accordance with the rules of due process, and most of them are pending.

38. For its part, the Chilean Government, with a view to contributing to the conduct of prompt and impartial investigations into alleged acts of torture, may exercise its power to directly request judicial intercession in such cases. This is what happened in the case of the Brazilian citizen Tania Cordeiro Vaz, who lodged a criminal complaint with the courts for the offences of torture and rape allegedly committed against her by officials of the Chilean Police Department. At the request of the Chilean Government, the Supreme Court, on 18 August 1993, appointed an inspecting magistrate of the Santiago Court of Appeals to handle the proceedings. 6/

D. Compensation for acts of torture

39. In response to the recommendations made by the National Commission for the Truth and Reconciliation in regard to compensation for victims of human rights violations during the military regime, and as a contribution of the State to this endeavour and a specific form of reparation designed to confer legal recognition on a problem experienced in Chile by a significant segment of the population, the Programme of Compensation and Full Health Care for Victims of Human Rights Violations (PRAIS) was introduced in 1991. At present, seven PRAIS teams are functioning as part of state health services in different areas of the country, financed by contributions from those services and international cooperation. Apart from torture victims, beneficiaries of PRAIS include family members of missing detainees, persons executed for political reasons and exiles.

40. From the time it was launched until the first quarter of 1993, this Programme provided coverage to 8,029 persons, corresponding to the aforementioned cases of torture in the following percentages:

First quarter of 1992:	7.3
Second quarter of 1992:	6.9
Third quarter of 1992:	14.4
Fourth quarter of 1992:	14.6
First quarter of 1993:	14.5

41. PRAIS defines its central objective as being the provision of comprehensive physical and psychological health care to persons whose fundamental rights have been violated, which means that, in addition to the above-mentioned situations relating to repression during the previous period, the programme is now handling cases of victims of ill-treatment occurring after 1990. This has happened in specific cases on which no statistics have been compiled.

Notes

1/ *Amparo* application No. 215-92 of 1 April 1992 filed on behalf of Mirentchu Vivanco Figueroa with the Military Appeal Court, which ordered the police to ensure the effective enjoyment by the prisoner of her right to confer with her lawyer, as laid down in article 293 of the Code of Penal Procedure.

2/ Amparo application No. 465-92 of 15 July 1992 filed on behalf of Alejandro Rodríguez Escobar and Cristián González López with the Military Appeal Court, which instructed the Military Tribunal and the Carabineros not to extend the period of detention beyond the time stipulated in article 272 bis of the Code of Penal Procedure.

3/ The National Commission for the Truth and Reconciliation was set up by Supreme Decree of the Ministry of the Interior of 25 April 1990 with the aim of establishing the truth about the situation of missing detainees and persons executed or tortured to death, in cases where the responsibility of the State appeared to be involved because of acts of its agents or persons in its service, as well as abductions and attacks on human life committed by individuals under political pretexts during the military regime. The National Commission published its report in February 1991.

4/ Report of the National Commission for the Truth and Reconciliation, vol. I, Part Three, chap. I, A, (d) and chap. II, A, (g).

5/ For example, article 3 (1) of the Extradition Convention with Nicaragua, signed on 28 December 1993, and the Extradition Convention with Spain, now awaiting approval by the Chilean Parliament.

6/ "Inspecting magistrate" is the designation given to a special high-level judge appointed to deal with cases which may affect the international relations of the Republic of Chile or to investigate offences causing public alarm.